

Declaration of Sherry Brennan

I, Sherry Brennan, declare as follows:

1. I am employed by Fox Cable Network Services, LLC as Senior Vice President, Distribution Strategy & Development. In this position, I consider and develop television content distribution strategy for various media platforms on behalf of numerous Fox entities including Fox Television Stations, Inc. and Twentieth Century Fox Film Corporation, two of the plaintiffs in this action, as well as Fox Broadcasting Company (collectively “Fox”). I make this declaration based on my personal knowledge and my knowledge of the television industry, in which I have worked for 24 years.

Fox’s Copyrighted Programming

2. Fox produces, owns, and distributes a wide variety of television programming and copyrighted works including, but not limited to, episodic dramas, comedies and other programs that are broadcast nationally on daytime and primetime television. These programs include, but are not limited to, popular and critically-acclaimed television series such as *Glee*, *Family Guy*, *Touch*, *Bones*, and *The Simpsons*, the longest-running primetime comedy series in the United States (Fox’s “Copyrighted Programs”). Fox’s Copyrighted Programs cost hundreds of millions of dollars to develop and produce.

Fox Distributes Its Programming In Numerous Markets

3. The main distribution channel for Fox’s Copyrighted Programs is the FOX network, a national broadcast television network (and one four “major” broadcast networks in the United States). The FOX network has more than 200 television station affiliates which locally broadcast television programming over the airwaves. Fox owns and operates 17 of these local television stations, including WNYW, Channel 5 in New York City.

4. Fox licenses some of its programs for first-run distribution on other broadcast and cable networks. For example, Fox owns the copyright to *Modern Family* which airs on ABC. Television series that have been on the air for at least four seasons may also be licensed to local television stations for daily syndication, i.e., when rerun episodes of a television series are shown daily five times a week.

5. Fox also makes its programming available to consumers who receive their television through paid subscriptions to cable, telco and satellite television distributors (sometimes called multichannel video programming distributors or “MVPDs”). Fox licenses MVPDs the right to retransmit its live broadcast signal to subscribers (also known as “retransmission consent”). Fox charges MVPDs license fees and/or other consideration in exchange for granting retransmission consent. When Fox charges retransmission consent fees to an MVPD, those fees are calculated by multiplying a per-subscriber fee by the number of subscribers who receive FOX network as part of their programming package.

6. Fox has also authorized certain MVPDs to stream Fox’s Copyrighted Programs live to mobile devices within the home, and one MVPD has been authorized to stream Fox’s Copyrighted Programs live to mobile devices within the home and outside the home over the Internet on certain terms and conditions. Fox has also entered into discussions with several other MVPDs who have expressed interest in licensing similar rights from Fox. One of Fox’s biggest competitors – plaintiff ABC – has already launched a live streaming service for local ABC stations in New York and Philadelphia. TBS and TNT networks have also announced similar live streaming apps for their networks.

7. Fox is also part of a joint venture with NBC Universal and others called Dyle (sometimes referred to as Mobile Content Venture). The Dyle service enables users to watch

live broadcast programming on their mobile devices, including iPads. Dyle, which offers its users approximately 90 television stations, is currently available in 35 markets, including New York City.

8. As is customary in the broadcast television industry, after a Fox Copyrighted Program is first broadcast on television, it is generally made available to consumers via other distribution channels and media. These secondary markets include, but are not limited to, the following:

(a) Video on Demand: Since 2010, Fox has been separately licensing to MVPDs the right to offer subscribers access to a library of previously-aired television programs for immediate, “on demand” viewing on standard television.

(b) Next-Day Internet Streaming: Paying subscribers of certain, pre-approved MVPDs are able to watch Fox’s Copyrighted Programs “on demand” the day after they air, on certain pre-approved Internet websites such as www.fox.com and, in some cases, the MVPD’s own website (with access currently limited to computers and laptops). Next-day Internet streaming is also available to subscribers of the Hulu Plus online streaming service offered at www.hulu.com. A subscription to Hulu Plus costs \$7.99 per month.

(c) Next-Week Internet Streaming: Eight days after Fox’s Copyrighted Programs air on primetime television,¹ Fox makes them available to all consumers via a limited number of approved Internet streaming websites such as www.fox.com, www.hulu.com, and certain MVPD websites. This allows viewers to watch their favorite Fox programs, any time, from any computer with high speed Internet access.

¹ “Primetime” is the evening block of television programming that attracts the most viewers, and advertisers therefore are willing to pay the highest prices to have their commercials shown during this time. For the Fox Network, primetime is 8:00 p.m. to 10:00 p.m. Eastern, Monday through Saturday. On Sundays, prime time begins an hour earlier.

(d) Mobile Streaming: Paying subscribers of Hulu Plus also receive access to Fox's Copyrighted Programs in a format that can be viewed from any computer with high-speed Internet access or mobile devices and tablets such as iPhones, Blackberrys, Android phones, and iPads. Fox also authorizes certain MVPDs to offer mobile streaming to their paying subscribers.

(e) The FOX NOW app: Internet streaming of Fox's Copyrighted Programs is also available to subscribers of participating MVPDs via the FOX NOW app for mobile devices. Fox has also launched similar apps that can be used on other set-top-boxes and gaming consoles such as Roku and Xbox.

(f) Digital Sales: Starting with Apple in 2006, Fox has been authorizing certain licensees to distribute ultra-premium digital downloads of Fox's Copyrighted Programs for online purchase (sometimes called electronic sell-through or download-to-own) with no commercials. These versions of Fox's Copyrighted Programs are typically available the day after a program airs on television and are also viewable on approved mobile devices. Fox enters into separate distribution deals with online merchants for these rights including, but not limited to, Apple (via its iTunes Store) and Amazon (via Amazon Instant Video). When a consumer purchases a digital download of a Fox Copyrighted Program, a copy of that program is delivered over the Internet to the consumer's mobile device, and the consumer can watch it even when the device is not connected to the Internet (for example, on an airplane).

9. Fox's Copyrighted Programs are approximately 22 or 44 minutes in duration (30 minutes or 60 minutes with commercials). Fox authorizes certain third parties the right to use clips of Fox's Copyrighted Programs. Clips can be used to promote a particular program, increase interest in a program or the FOX network, allow for a preview of a program, and/or to entertain viewers.

Aereo

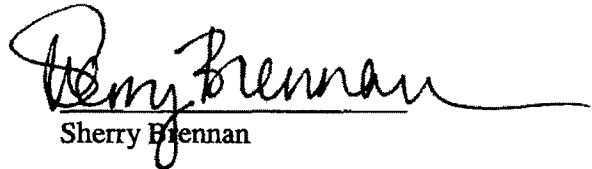
10. I understand that Aereo streams all of the major broadcast networks over the Internet, including Fox's Copyrighted Programs that are broadcast by Fox's New York television station affiliate, WNYW.

11. Fox has never authorized Aereo to make copies of Fox's Copyrighted Programs, in whole or in part, for any purpose whatsoever. Furthermore, Fox has never, and would never, license a third party the right to copy Fox's Copyrighted Programs in aid of an unlicensed, unauthorized service that streams Fox's Copyrighted Programs over the Internet.

12. Fox does not allow commercial services to retransmit its broadcast signals and programming via community antennas without Fox's express retransmission consent.

I declare under penalty of perjury under the laws of the State of New York that the foregoing is true and correct.

Executed this 5th day of June, 2013 at Los Angeles, California.


Sherry Brennan